

Service Date: August 23, 1996

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the MONTANA)	UTILITY DIVISION
POWER COMPANY's Request for)	
Approval of the Advanced Silicon Materials,)	DOCKET NO. D96.6.106
Inc., Tariff.)	ORDER NO. 5924a

PROCEDURAL ORDER

Background

On June 18, 1996 the Montana Public Service Commission (PSC or Commission) received a Motion for Protective Order from Montana Power Company (MPC) in anticipation of its Advanced Silicon Materials, Inc. (ASIMI) tariff filing. MPC requested to limit access and use of proprietary and confidential information, primarily the contract terms for electric service MPC would charge to ASIMI which resulted from strictly secret negotiations. The Commission issued Protective Order No. 5924 on July 3, 1996. On August 9, 1996 MPC submitted its rate filing and proposed "Rate Schedule - ASIMI - 1" for consideration and review by the Commission. The Commission held a work session on August 20, 1996 and directed Staff to prepare a procedural schedule and set an expedited hearing for consideration of the proposed "market-based" "competitive" tariff filing. This Request is not for a rate increase and is for approval of a tariff which may become the model for a generic electric market-based tariff. Therefore, the hearing will be open to limited participation by parties demonstrating a direct interest in the proceedings. (See, Intervention, ¶ 7.)

The Commission delegated to Commission Staff the duty to set a procedural schedule and issue the Procedural Order. The Commission sets forth a firm schedule in this Procedural Order. The Commission staff may amend the procedural schedule when the amendment does not alter the scheduled hearing date. The Commission will reconsider the date set for hearing only upon good cause shown.

The Commission issues the following Procedural Order and Schedule:

1. Under the authority of ARM 38.2.2702, the Commission enters this Order setting forth the procedure and schedule to be followed in Docket No. 96.6.106. This Order is effective immediately and remains effective until modified by the Commission.

SCHEDULE

2. All dates listed in the following schedule are **receipt dates** (filing and service) unless otherwise specified. Dates prior to the service date of this Order are for reference purposes only. Dates after the hearing are subject to change after the hearing. Upon a determination that parties have not addressed concerns raised in the Commission staff review of the application, the Commission staff may identify the additional issue(s) and require testimony. At that time the Commission may set a supplementary procedural schedule.

- (a) August 9, 1996: Request for tariff approval and Explanation filed at Commission.
- (b) August 23, 1996: Notice of Request and Intervention Deadline issued by Commission. Procedural Order issued by Commission.
- (c) September 6, 1996: Final day for intervention. **Final day for MPC to assign witnesses to its filing.**
- (d) September 11, 1996: Final day for written discovery (includes data requests) from intervenors to MPC on Request.
- (e) September 20, 1996: Final day for MPC to respond to intervenor discovery.
- (f) October 4, 1996: Final day for testimony from intervenors.
- (g) October 11, 1996: Final day for written discovery from MPC to intervenors.
- (h) October 18, 1996: Final day for intervenors to respond to written discovery from MPC.
- (i) October 25, 1996: Final day for filing of MPC Rebuttal Testimony.
- (j) October 28, 1996: Final day for prehearing memoranda filed by all parties. Staff shall file a limited prehearing memorandum pursuant to ¶22.
- (k) October 31, 1996: Hearing commences.
- (l) November 8, 1996: Simultaneous opening briefs.
- (m) November 22, 1996: Simultaneous response briefs.

- (n) December 16, 1996: Final Order issued by the Commission.

PROCEDURE

General

3. The procedure governing this Docket is set forth in applicable provisions of (a) Title 69, Chapter 3, MCA; (b) Title 2, Chapter 4, MCA, Montana Administrative Procedures Act (MAPA); and (c) ARM Title 38, Chapter 2, procedural rules.

Service and Filing

4. Copies of all pleadings, motions, discovery requests, discovery responses, prefiled testimony, and briefs shall be filed with the Commission and served on all parties (MPC and all intervenors); **except that discovery requests and responses which disclose information pursuant to the Protective Order No. 5924, which MPC does not want disclosed, shall be submitted to MPC on yellow paper, with a summary which expurgates any protected information to be submitted to parties signing an Exhibit A (other than the Montana Consumer Counsel).** MPC may pursue remedies and/or work with the parties to release and/or further protect information. Parties have their rights under the Protective Order to challenge the confidentiality. Parties shall file with the Commission an original and ten copies of motions, testimony, briefs and documents directed to the Commission. Service upon the parties shall be upon each party's attorney of record, if applicable, and such other individuals as may be reasonably designated by the attorney of record. **Sending copies of documents by facsimile (faxing) does not satisfy the filing and service requirements.**

5. The Commission recommends the following guidelines where data processing and computer equipment are available:

- (a) Data may be provided on 3 ½ " IBM/PC Compatible computer diskettes;
 - (b) Spreadsheets may be provided in Lotus 1-2-3 Version 3.1 DOS compatible format;
 - (c) Text may be provided in Word Perfect Version 5.1, 6.0 or 6.1 compatible format.
6. Testimony, exhibits and data requests/responses should be provided both electronically and in hard copy. Briefs, motions and any correspondence normally provided to

the Service List should be made available electronically on request. In general, all parties to this proceeding should attempt to provide rate filing material in electronic form to the extent it is practical and not cost-prohibitive.

Intervention

7. Parties seeking to intervene must file a Petition to Intervene with the Commission. Given the limited nature of this filing, in a request for intervention, petitioners other than the Consumer Counsel must (a) identify the general position that the intervenor will take if the intervention is granted; and (b) demonstrate a legal interest directly affected by this Docket. Intervention will be effective only upon action of the Commission. The Consumer Counsel will be granted intervention as a matter of right.

Discovery

8. The term "discovery" includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as data requests. The Commission urges all parties to conduct discovery primarily through the use of data requests. The dates set forth in the Procedural Schedule, ¶ 2, are *deadlines* for filing.

9. The Commission directs all parties to prepare data requests according to the following guidelines:

(a) Parties must assign their data requests a request number (e.g., MPC-001). Request numbers must be consecutive regardless of the party to whom the request is directed (e.g., the PSC might direct PSC-001 through 008 to MP, PSC-009 through 016 to MCC, and PSC-017 through 019 to MDU).

(b) All data requests must include at the beginning of each request a description of five words or less explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit number and page number, etc., may be included in addition to, but not in lieu of, the subject of the request. This requirement will help to identify all data requests and responses addressing a particular subject or group of subjects. Subject descriptions will obviously vary from one party to another. However, each party should attempt to keep descriptions consistent from one request to another.

(c) Multi-part requests may be used, each part denoted by a lower case letter (a, b, c, d, and e). Requests must be limited to five parts (a-e), without any sub-parts. If additional parts are necessary, additional requests must be made. A single part request should be denoted by the request number only.

(d) Examples of acceptable data requests are as follows:

PSC-500 RE: Return on Equity
Witness - Doe, Page JQD-4, Lines 13-15.

Please provide an analysis of hypothetical debt/equity structure.

PSC-501 RE: Return on Equity
Witness - Doe, Page JQD-14, Lines 11-14.

- a. What is the cost of equity and how is it derived?
- b. What portion of the equity capital is transferred, or imputed, to debt for ratemaking purposes?

10. The party receiving the written discovery or data requests has five days from receipt to file objections to the request(s). Notice of the objection shall be served upon the Commission and on all parties. The Commission may dispose of objections by prompt ruling or may schedule argument. Failure to timely object will be deemed acceptance of the request. Parties are encouraged to try to resolve concerns about requests before filing objections.

11. Any requesting party dissatisfied with the response to any written discovery or data request and desiring Commission action to compel must serve its written objection(s) and relief requested simultaneously upon the Commission and parties within five days after receipt of such response. The Commission may dispose of such objection(s) by prompt ruling or may schedule argument. The Commission will act either to sustain or overrule the objection(s), and if sustaining, set a deadline for a satisfactory response. Submission of written discovery after the deadline established will be allowed by leave of the Commission only. The Commission will not grant requests without a showing of good cause as to why the request was not submitted within the time period allowed.

12. Unless excused by the Commission, failure by a party to answer data requests or other discovery from any party may result in Commission action: (a) refusing to allow the failing party to support or oppose related claims; (b) prohibiting introduction of related matters in evidence; (c) striking pleadings, testimony, or parts thereof; (d) staying further proceedings until the request is satisfied; or (e) dismissing all or part of the case, defense, or proceeding.

Testimony and Evidence

13. At hearing, the Commission will adopt into the record all prefiled direct, answer, and rebuttal testimony (including additional issues) upon motion of the proponent, without the witness reading the testimony into the record. The testimony will be an exhibit and not otherwise entered into the transcript.

14. All proposed exhibits and prefiled written testimony shall be marked for the purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter for the preferred manner of identifying exhibits.

15. When cross-examination is based on a document not previously filed with the Commission, copies of the document must be made available to the Commissioners, parties, and staff, unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each Commissioner, the Commission staff and all parties. This last requirement may be waived if the documents to be introduced are bulky, or for other good cause, upon making previous arrangements with the Commission and all parties.

16. Parties may be permitted to present live rebuttal testimony only if it is in direct response to an issue raised for the first time in cross-examination or in the testimony of a public witness. Such testimony will be allowed only by leave of the Commission or presiding officer.

17. The Montana Rules of Evidence in effect at the time of the hearing in this Docket will govern at the hearing.

18. Any party to this proceeding responding to written discovery from any other party or the Commission shall have each person authoring any response(s) present and available as a witness at the hearing to introduce the response(s) and be available for cross-examination. Parties may waive objection(s) to introduction absent the author and the right to cross-examine.

Upon Commission approval of parties' agreement to waiver, the person responding to data requests need not be present to testify and the responses may be introduced into the record. Written discovery (not including transcripts of depositions on oral examination) and data responses will be introduced at hearing only pursuant to applicable rules of evidence and through an appropriate witness subject to cross-examination, or by waiver of Parties and upon stipulation approved by the Commission.

Prehearing Motions and Conferences

19. Motions by any party, including motions to strike prefiled testimony and motions concerning any procedural matter connected with this Docket, shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs unless otherwise requested by a party and approved by the Commission. Upon a grant of oral argument, the requesting party shall notice it for hearing before the Commission.

20. The Commission staff may set a final Prehearing Conference to discuss settlement of any issues in the proceeding; simplification of issues; possibility of obtaining admissions of fact and documents; distribution and marking of written testimony and exhibits prior to the hearing; and other procedural matters as may aid in the disposition of the proceeding.

21. Nothing in this order shall be construed as limiting the legally established right of the Commission or its staff to inspect the books and accounts of MPC at any time.

Prehearing Memorandum

22. Each party shall submit a prehearing memorandum. The memorandum shall contain a list of all issues uncontested and contested; witnesses to testify; and exhibits and discovery for introduction at hearing. Any special needs to accommodate witness sequence or scheduling should be identified in the prehearing memorandum. Commission staff shall file a limited prehearing memorandum identifying data or discovery responses to be introduced into the record and the witnesses necessary to sponsor the responses, or alternatively, to testify.

Done and Dated this 23rd day of August, 1996 by delegation to Commission staff as the Order of the Montana Public Service Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

NANCY MCCAFFREE, Chair

DAVE FISHER, Vice Chair
BOB ANDERSON, Commissioner
DANNY OBERG, Commissioner
BOB ROWE, Commissioner